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**From:** Stavnes, Sandra [Stavnes.Sandra@epa.gov]  
**Sent:** 2/24/2017 11:22:28 PM  
**To:** Smidinger, Betsy [Smidinger.Betsy@epa.gov]; Hestmark, Martin [Hestmark.Martin@epa.gov]; Lensink, Andy [Lensink.Andy@epa.gov]; Murray, Bill [Murray.Bill@epa.gov]; Vranka, Joe [vranka.joe@epa.gov]; Moler, Robert [Moler.Robert@epa.gov]; Coleman, Charles [COleman.Charles@epa.gov]  
**Subject:** Fw: [WQ News] Landowners say EPA botched cleanup, now they want a shot

FYI

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**From:** Schmit, Ayn  
**Sent:** Friday, February 24, 2017 11:57 AM  
**To:** Stavnes, Sandra  
**Subject:** FW: [WQ News] Landowners say EPA botched cleanup, now they want a shot

Sure you've already seen this, but wanted to pass along in case.

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**From:** wq-news@googlegroups.com [mailto:wq-news@googlegroups.com] **On Behalf Of** Loretta Lohman  
**Sent:** Friday, February 24, 2017 8:42 AM  
**To:** wq-news@googlegroups.com; landinterests@googlegroups.com  
**Subject:** [WQ News] Landowners say EPA botched cleanup, now they want a shot

latimes.com

## Landowners say EPA botched cleanup, now they want a shot

MATT VOLZAssociated Press

George Niland wonders whether he should wear a respirator when he mows his lawn. Serge Myers laments not being able to garden in his backyard. Rob Phillips puzzles over why his 22 acres have been marked as an unblemished island surrounded by a sea of contamination.

The three men all live in the shadow of a 585-foot-tall smokestack that has been preserved as a state park that nobody can visit because of the pollution at the site. Visitors are guided to a viewing area about a mile away to see the stack, which is taller than the Washington Monument.

Residents rallied to keep the stack as part of the legacy of southwestern Montana's mining days, when copper was king and the ore processed in the nearby town of Anaconda was used to electrify the United States.

The flip side of that legacy is the arsenic and other toxic metals that spewed from the smokestack for nearly a century and settled in the ground for miles around the old copper smelter.

Three years after BP-owned Atlantic Richfield Co. shut down the Anaconda smelter in 1980, the U.S. Environmental Protection Agency designated 300 square miles surrounding it as a Superfund site because of the hazard to human health and the environment. The major concern was high concentrations of arsenic in the soil and water, a contaminant that can cause cancer and a range of other diseases.

Niland, Myers and Phillips are among dozens of residents in this small company town next to Anaconda who say federal officials have botched the environmental cleanup, which is in its 34th year, and they want a shot at

cleaning their own yards. They claim the EPA and Atlantic Richfield have given their community short shrift, partially cleaning only two dozen yards, and now have no plans to return.

"We've watched it over the years, and they've cleaned completely around us," said Niland, a former worker for the railroad that hauled ore and slurry between Butte and Anaconda. "We didn't even know we were contaminated until we got our dirt sampled and then found out that, geez, we shouldn't even let the kids play out there."

Ninety-eight Opportunity residents are suing Atlantic Richfield, also known as Arco, to force the company to pay for the cleanup they want: the removal and replacement of all their soil to a depth of 2 feet, and permeable barriers installed underground to keep arsenic in the shallow groundwater from flowing onto their property.

Their aim is to cut the level of arsenic in the soil to about 15 parts per million, which they say is the natural level of arsenic in the soil. However, the EPA's remediation plan won't clean a residential yard unless it contains more than 250 parts per million arsenic — a level that Opportunity residents call arbitrary and worry is still unsafe.

"We'd like it cleaned up to what it would have been had the smelter not existed," Phillips said.

Arsenic levels in the Opportunity residents' yards vary. Myers said an initial test found his yard measured 167 parts per million, which is below the EPA's cleanup threshold. However, a later test found parts of his yard contained 300 parts per million, and Myers was scheduled for a cleanup in 2014 that never happened.

The company — backed by the EPA — argues the plaintiffs' plan interferes with the Superfund cleanup, which Arco has spent \$400 million implementing.

EPA spokesman Robert Moler said the work in the Opportunity residents' yard has been completed, and the 250 parts per million cleanup threshold is within the federal agency's "acceptable cancer risk range."

"The goal of the cleanup plan is to protect human health, not to restore soil levels to original conditions," Moler said.

BP spokesman Brett Clanton declined to comment, citing the pending litigation. In a filing to the Montana Supreme Court, Arco attorney John Davis wrote, "Only EPA has the authority to select the environmental remedy at a Superfund site and to compel a responsible party to perform or pay for that remedy."

Myers, who worked at the smelter for 17 years, said not all Opportunity residents agree with the plaintiffs' decision to go after Arco. One man who drew a pension from Arco asked why he would want to bite the hand that feeds him, he said.

Myers said he, too, feels that ambivalence. He is proud of his work and what Anaconda's industry did for the nation, but he just wants to clean his yard, and he bristles at being told he can't do it.

"There is stuff that you cannot do because they stop you," Myers said. "If we had the money, my yard would be cleaned. I really would clean it. I'd hire the best they had to clean the darn thing."

An expert for the plaintiffs previously testified the cleanup they are seeking would cost between \$50 million and \$57 million, according to court filings, which averages to between \$650,000 and \$740,259 per yard.

After nearly eight years of litigation and a string of victories by the plaintiffs, the case was about to go to trial last year when Arco asked the Montana Supreme Court to intervene. The high court will decide whether the federal law that guides environmental cleanups on Superfund sites prevents the residents of Opportunity from seeking restoration damages from Arco in state court. The high court has scheduled arguments to be heard April 7.

The EPA supports Arco's position. The residents' plan would impose more stringent cleanup levels than those that Arco and the federal agency negotiated, Justice Department attorney Matthew Oakes wrote to the court. If the lawsuit is successful, it will lead to other landowners suing for their own fixes and hurt the chances of successfully negotiating future Superfund cleanup settlements with polluters, Oakes wrote.

"Even if EPA could coordinate with the landowners, recognizing this claim could lead to more claims affecting hundreds of thousands of additional contaminated acres," he wrote.

The federal agency's opposition is galling to Niland, Myers and Phillips. The way they see it, the EPA is taking Arco's side over the people the agency is supposed to be protecting from polluters.

"If there's any justice, there's got to be a day in court for us," Myers said. "Our families deserve this, and so do the other people in our area."

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